IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.4.2007

CORAM:

THE HONOURABLE MR.JUSTICE DHARMARAO ELIPE
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

W.A.Nos.2234 of 2000, 2665 to 2667 of 2002,
W.P.Nos.12544 of 1999 and 47160 of 2006
W.A.M.P.Nos.4498 to 4500 of 2002 and M.P.1/2006
and C.M.P.No.19410 of 2000

United Labour Federation,
represented by its General Secretary
Sri K.Nithyanandam (Reg.No.2657/CNI)
C.J.Complex IV Floor,
No.149 Thambu Chetty Street,
Madras-600001. ... First Respondent in W.A.Nos.2665 to 2667 of 2002 and Petitioner in W.P.12544/99

1.The Corporation of Chennai,
represented by its Commissioner,
E.V.R.Periyar Salai,
Ripon Buildings,
Madras-600 003. ... First Respondent in W.A.Nos.2234/00 and in W.P.Nos.12544 of 1999 and 2nd Respondent in W.A.Nos.2665 to 2667 of 2002

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2.M/s.Sulab International,
represented by its Chairman P.Jha,
E.135 VI Annexe,
Besant Nagar,
Madras-600090. ... Appellant in W.A.Nos.2665 to 2667 of 2002 and 2nd Respondent in W.P.12544/99

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Nagara Thuyimai Padukavalar
Munnetra Sangham 2000
rep by its President
No.13, N.S.K. Nagar,
Anna Nagar Main Road,
Chennai-40 ... Appellant in W.A.2334/00

The Superintending Engineer (SWM)
Solid Water Management
Corporation of Chennai
Chennai.3 ... 2nd Respondent in
W.A.Nos.2234/00

W.P.NO.47160 of 2006

United Labour Federation
rep by its President
C3 Complex IV Floor
No.149 Thambu Chetty Street,
Chennai. 600 001 ... Petitioner

VS

1. Commissioner of Police
Egmore , Chennai-8.

2. The Deputy Commissioner of Police
Washermmanpet,
Chennai- 600 021.

3. The Corporation of Chennai
rep by its Commissioner
E.V.R. Periyar Salai,
Ripon Buildings,
Chennai- 600 003.

4. The Inspector of Police
H4 Police Station
Wannarpet,
Chennai-21.

5. Inspector of Police
H5 Police Station
Chennai- 600 021. ... Respondents

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Writ Appeal No.2234 of 2000 has been filed under clause 15 of the Letters Patent as against the order dated 5.12.2000 made in W.P.No.20436 of 2000 by a learned single Judge of this Court.

To issue a Writ of Certiorarified Mandamus calling for the records of the third respondent relating to notice bearing S.W.M.C.No.A7/3918 to 3969/00 pursuant to the advertisement in the issue of the Daily Thanthi dated 20.11.2000 issued by the 2ne respondent in so far as the P.CS allotted to the Petitioner Sangham as per G.O(2K) 130 dated 14.12.99 are concerned and quash the same and direct the second respondents to forthwith hand over to the petitioner the 30 P.CS allotted to the petitioner organisation on 24.3.2000 for the purpose of Maintenance in the lots conducted on 24.3.2000 filed herewith as Ex.A.

Writ Appeals 2665 to 2667 of 2002 have been filed under Clause 15 of the Letters Patent as against the orders dated 26.4.2002 respectively made in W.P.M.P.Nos.9595, 9597 and 9598 of 2002 in W.P.No.12544 of 1999.

W.P.No.12544 of 1999 has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 1st respondent Corporation to absorb the Members of the petitioner Union listed in the typed set of papers as its employees and regularise their services and in particular afford them just and reasonable conditions of service such as fixed working hours, D.A., weekly, national and festival holidays, payment of bonus etc., and protection for the body of the workers by giving them uniforms, gloves etc. and protective gear, and also ensure payment of same wages for the women workers as is given to men workers in accordance wit the provisions of Equal Remuneration Act.

W.P.No.47160 of 2006 has been filed as a Public Interest Litigation under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent Corporation to take action in recovering the public conveniences, which are in the hands of anti-social elements in the North Madras, as furnished in the annexure to the writ petition, with the assistance of the 1st respondent and also direct the 1st respondent to take appropriate action against the said persons, under criminal law, including by way of arrest for occupying the said Public Conveniences illegally and also give protection to all the public conveniences from being taken over illegally and recover the moneys appropriated by such anti-social elements.

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For petitioners in both the W.Ps.,who: are R.1 in W.As. and for appellants in W.A.2234 : Mr.V.Prakash, Senior Counsel for M/s.G.Ramapriya in WP.12544/1999 and for Mr.S.S.Vasudevan in W.P.47160/2006

For R.2 in W.P.12544/1999, who are appellants in W.A.Nos.2665 to 2667/2002 : Mr.Jeyes Dolia for M/s.Aiyar and Dolia

For R.1 in W.P.12544/1999, R.2 in W.As. 2665 to 2667/2002 and respondents in W.P.47160/2006 and for respondents in W.A.2234/2000 : Mr.R.Viduthalai Advocate-General for Mr.L.N.Prakasam

Mr.G.Jeremiah, Advocate Commissioner

COMMON ORDER

DHARMARAO ELIPE, J.

While Writ Appeal No.2234 of 2000 has been filed against the order dated 5.12.2000 made in Writ Petition No.20436 of 2000 by a learned single Judge of this Court, Writ Appeal Nos.2665 to 2667 of 2002 have been filed as against the orders passed by the learned single Judge, dated 26.4.2002 respectively made in W.P.M.P.Nos.9595, 9597 and 9598 of 2002 in W.P.No.12544 of 1999.

2. When Writ Appeals 2665 to 2667 of 2002 were taken up for hearing, which have been filed against the interim orders, the learned counsel for the respective parties have consented to dispose of the main Writ Petitions themselves, to settle the issue involved in this matter ultimately. Therefore, the main writ petitions are taken up for disposal.

3. Likewise, since from the affidavit filed by the Commissioner, Chennai Corporation dated 12.2.2007 it came to be

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known that a connected Writ Appeal in W.A.No.2234 of 2000 is pending, directing the said Writ Appeal also to be filed along with these matters, we heard all the matters together to dispose them by this common order.

4. In W.P.No.12544 of 1999 the petitioner/United Labour Federation has submitted that the Chennai Corporation has a number of Public Conveniences (in short P.Cs) in North Madras Corporation Division Nos.1 to 63 and the 2nd t respondent/Sulabh International, claiming to be a non-profit organisation, approached the 1st respondent/Corporation and obtained four P.Cs. in North Madras and two P.Cs. in South Madras for constructing the same and also maintaining them. The 1st respondent/Corporation pays 80% of the project cost as advance to the 2nd respondent and 20% on completion. A further 20% of the cost is paid as implementation charges and apart from this, money was also collected from the public, who are using the P.Cs., by the 2nd respondent. From 1986 to 1992, another 20 P.Cs. were added at a cost of Rs.1 crore out of which 80% was paid as advance and Rs.20 lakhs on completion of the project and apart from this 20% was paid as implementation charges. In 1992, apart from the P.Cs. aforesaid, the 2nd respondent Corporation entrusted the maintenance of 48 P.Cs. built by the Corporation itself to the 2nd respondent and for maintenance of the 48 P.Cs., the Corporation was paying a sum of Rs.5,000/= per each P.C. i.e. amount to Rs.2,40,000/= per month, working out to Rs.28,80,000/ per annm and apart from this payment, the 2nd respondent was allowed to collect money from the public.

5. The petitioner further submitted that in the years 1995 and 1996, another 42 P.Cs. were constructed by the Corporation and was entrusted to the 2nd respondent on a 'pay and use' basis and between 1996 and 1999, further P.Cs. were added and as of today, there are 314 P.Cs. implemented by the 2nd respondent, collecting money from the public. Out of 314 P.Cs. in the city of Madras, in North Madras, there are 225 P.Cs. employing 400 persons and apart from those 400 workers, there is one Secretary and seven supervisors and three technicians.

6. The petitioner further furnishing the list showing the emoluments of Secretary, Supervisors and men and women workers, would submit that all the workers hail from the scheduled caste community of Adi-Andhra and Adi-Dravida and they were not provided with protection items such as gloves or nose-guards or footwear or aprons and no benefits such as earned leave, bonus or medical treatment, educational allowance, HRA, D.A. And weekly or festival holidays, even though the 2nd respondent is minting money to the tune of Rs.2 crores per annum only as collections from the public, apart from other moneys received from the first respondent; that the 1st respondent, without calling for any tenders, has entrusted

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the work to the 2nd respondent, who was claiming to be a non-profit welfare organisation and the same organization runs P.Cs. in the name of 'Bangi Mukthi' in Madurai and 'Akila Bharathia' in Tiruchirapalli.

7. The petitioners further state that the work done by the workers involved in the writ petition is integral to the statutory duties imposed on the 1st respondent Corporation by the Madras City Municipal Corporation Act and the 1st respondent can also employ this labour directly on fair terms and still see the profits which could go to the coffers of the 1st respondent Corporation for carrying out its public duty.

8. When the above said W.P.No.12544 of 1999 was taken up for admission, a learned single Judge of this Court, while admitting the writ petition on 23.7.1999, has observed as follows:

> "The Writ Petition is admitted against the second respondent alone and the first respondent is only impleaded as a formal party. In that view, the writ petition is admitted. Though Mr.Prakash is not inclined to make such representation, this Court records that this Court is not inclined to grant relief against the first respondent Corporation. However, the first respondent will continue as a formal party as ultimately the orders that may be passed against the second respondent could also be implemented through the first respondent. Only for that limited purpose, the first respondent remains as formal party.
>
> Admit. Issue Rule NISI. Call for records by twelve (12) weeks."

9. However, the 1st respondent filed a counter affidavit wherein it has been stated that since from 1985, the second respondent are entrusted for construction and maintenance of public conveniences from time to time and at present, there are 316 Nos. of P.Cs. and 12 Nos. of Urinals conveniences have been entrusted to the second respondent for maintenance for 30 years; that out of this, 202 P.Cs. were 'non-pay and use' P.Cs. and balance 140 are 'pay and use' P.Cs.; that out of the above 'pay and use' P.Cs., 71 Nos. of P.Cs. were constructed by the 2nd respondent and other P.Cs. were already constructed by the Corporation of Chennai and entrusted to the second respondent for maintenance; that during 1992, the Special Officer Council by Resolution No.1588/92 allowed the Corporation of Chennai to entrust 77 'non-pay and use' P.Cs. to the second respondent for maintenance and for maintaining these P.Cs., during the first year, the Corporation has paid Rs.4,500/= per month to the second respondent and for the second year Rs.2,250/= per month and for the third year Rs.1,125/= per month. Further, as per the Special

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Officer Resolution No.3851/94, dated 24.10.1994, the Corporation entrusted 125 'non-pay and use' P.Cs. to the second respondent and for maintaining these 125 P.Cs., the Corporation had paid Rs.5,000/= per month and for the second year Rs.3,500/= per month and for the third year Rs.2,200/= per month was paid to the second respondent and for both the 77 number of public conveniences and 120 number of public conveniences, the second respondent has to maintain them with their own expenses in good condition for the next 27 years; that at present, all the 316 P.Cs. entrusted to the second respondent have been converted into 'Pay and Use' P.Cs. and apart from the above, as per the Special Officer Council Resolution No.2418/96 dated 1.10.1996, for the 202 P.Cs. in the 'non-pay and use' P.Cs. category, Rs.15,000/= per year have to be paid to the second respondent for the next 27 years; that the electricity charges will be paid by the Corporation for all the P.Cs. and urinals entrusted to the second respondent. The 1st respondent would submit that since the workers were employed by the 2nd respondent, the respondent Corporation is nothing to do with their wages and other benefits as mentioned in the affidavit and prayed to dismiss the writ petition.

10. The 2nd respondent filed a counter stating that all the persons working for the second respondent Organisation are Associate Members/Social Workers and all of them are required to enroll as Associate Members with the State Head Office of the second respondent organiation and without this membership, a person cannot join in the organisation as a worker; that a Division Bench of the Patna High Court, in a case filed by the workers of the Union against the 2nd respondent Organisation, has held that the 'Sulabh International' (now known as Sulabh International Social Service Organisation) is not an 'industry' in its judgment in CWJS No.3408 of 1989, dated 9.2.1990 which was upheld by the Apex Court in Civil Appea No.2527 of 1991 dated 20.3.1996.

11. The 2nd respondent further stated that Mr.Vijayaprakasam, who has sworn in the affidavit in W.P.12544 of 1999, had joined the 2nd respondent Organisation as an Associate Member/Social Worker and he was given responsibility of collection of money from various toilet blocks, which are all having 'pay and use 'systems and since he started swindling the funds of the organisation and instigating the other Associate Members to indulge in violent acts, and was interfering with the administration of the second respondent organisation, he was removed from the Associate Membership by the second respondent organisation on 23.6.1999. Aggrieved by the said removal, the said Vijayaprakasam along with his henchmen on 25.6.1999 at about 12 noon, threatened the officials of the 2nd respondent for which a complaint was registered as Petition No.122 CSR/J5/99 dated 26.6.1999 and

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subsequently also, since the said Vijayaprakasam indulged in criminal activities, another complaint was lodged on 23.7.1999 before the Deputy Commissioner of Police, Washermenpet, Madras; that the said Vijayaprakasam had collected lakhs of rupees from various toilet centres and converted all the money into his own use, by making the second respondent organisation face huge loss and a list showing the number of police complaints filed by the 2nd respondent organisation is also furnished; that in order to prevent the said Mr.Vijayaprakasam, the second respondent organisation had moved a suit before the XIV City Civil Court, Madras in O.S.No.5078 of 1999 and obtained interim injunction on 11.8.1999.

12. It is further submitted that the 2nd respondent Organisation used to make payment of wages promptly and since the Vijayaprakasam and other nine Associate Members jointly failed to remit the collection money to the head office of the second respondent organisation, the second respondent could not pay the wages for the month of June, 1999; that the 2nd respondent is maintaining the list of Associate Members, who are receiving wages from them every month and that list is not tallying with the names of the persons found in the list enclosed in the Writ Petition and that apart, there are 102 persons, who are not the Associate Members and no way connected with the organisation and their names are not available in the pay roll; that if the petitioners will not interfere with the collection and remittance of the amounts, there will not be any problem in paying the wages to the Members; that the accounts and particulars given by the writ petitioner are totally wrong and the second respondent organisation is incurring huge expenses, in making payment of wages for nearly 300 persons working for them and for carrying out repairs, maintenance, alterations, constructions in and around the toilet centres and blocks, which include the buying of cleaning materials and other maintenance works; that the 2nd respondent is duty bound to make the payment for the month of June 1999 and prayed to direct the petitioners not to interfere with the receipt of the collection money by the second respondent organisation; that Mr.Vijayaprakasam and nine other Associate Members/Social Workers had already been removed from the membership of the organisation and even after their removal, they are indulging in unlawful activities and also carrying on collecting money from various toilet centres amounting to Rs.20,000/= per day in North Madras Zone and all the above said nine associate members should also hand over the collections to Mr.Vijayaprakasm; that the said Vijayaprakasam had collected Rs.10,80,000/= from 22nd June to 25th June and from 7th July to 26th August of 1999 and so far, he did not take any step to remit the said amounts to the 2nd respondent organisation; that even after obtaining the injunction from City Civil Court, Madras, Mr.Vijayaprakasam and his nine men fail to

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obey the order of the injunction and are preventing the organisation officials from receiving the collection amount and the 2nd respondent has lodged complaints against the acts of Mr.Vijayaprakasam and his men in six police stations in connection with the unlawful activities and the cases are pending investigation.

13. The 2nd respondent further stated that they are ready to make the payment of honorarium to all the associate members/social workers in North Chennai as per their payment list for the month of April and May 1999 and that many of the names are not available in the payment list or found place in the members list annexed with the writ petition and the same is having 324 members which is not tallying with the list of members who are getting payment prior to June 1999 from their organisation and therefore, prayed to dismiss the writ petition.

14. An Additional counter-affidavit has also been filed by the 2nd respondent reiterating the judgment of the Division Bench of the Patna High Court in CWJC 3408 of 1989, dated 9.2.1990 and further stating that the second respondent has no employees and all the members of the second respondent are working as honorary members and no one is forced to continue as a member of the organisation and there is no master and servant relationship between the members; that since no relief is prayed against the 2nd respondent, the writ petition is liable to be dismissed as not maintainable; that the expenses incurred for the operation of the public conveniences for initial three years are reimbursed by the Corporation of Chennai and thereafter, the P.Cs. are operated by the 'pay and use' scheme and even if the collections in the P.Cs. are not adequate to meet the actual expenses, efforts and endeavours are made to maintain the P.Cs. in healthy and hygienic conditions and that any member is free to discontinue at his wish.

15. In the said writ petition, W.M.P.No.17926 of 1999 was filed by the petitioner praying for an ad-interim direction to the respondents to forthwith pay the wages of the members of the Petitioner Union and when an order has been passed on 8.9.1999, directing the 2nd respondent to pay arrears of wages to those workmen whom the second respondent admits, the 2nd respondent filed a petition in W.M.P.No.22527 of 1999 seeking to clarify the said order on the ground that a specific quantum is payable by the parties in the light of admitted roll of members and the place of disbursement of wages. The learned single Judge, by the common order dated 1.11.1999 made in W.M.P.Nos.17926 and 22527 of 1999 has appointed four members of Bar viz. (1) Mr.G.Jermiah, (2) Mr.Thennavan, (3) Mr.C.S.Vasan and (4) Ms.T.Ramadevil as Advocate-Commissioners in respect of Zones 1 to 4 respectively to take charge of the entire 225 blocks of P.Cs. which were entrusted to

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M/s.Sulabh International and various interim directions were also issued at the instance of the Advocate-Commissioners, who have filed their reports also.

16. Pursuant to the appointment of Advocate-Commissioners, the petitioners have filed W.P.M.P.No.9595 of 2002, praying to issue an order of ad-interim direction to the Advocate-Commissioners to disburse one month's wages as Bonus to each of the workers for each year for the years 1999, 2000, 2001 and 2002 from out of the amounts deposited in the Bank in the High Court Extension Counter of Indian Bank, wherein a learned single Judge of this Court, by the order dated 26.4.2002, has directed that an amount equivalent to two months to be paid by way of interim bonus to the petitioners. In W.P.M.P.No.9597 of 2002 filed by the petitioners praying to issue an ad-interim direction to the Advocate-commissioners to verify the report and further appoint a person for maintenance and to do repairs, the learned single Judge, by the order dated 26.4.2002, has directed that the Corporation should take expeditious steps to repair the public conveniences as per the recommendation made by the Advocate-Commissioner and thereafter to hand over the same to the Advocate-Commissioner. In W.P.M.P.No.9598 of 2002 filed by the petitioners, praying to direct the Commissioner of Police to give necessary police protection to the Advocate-Commissioners to take over the facilities at 32 locations which were retained by the Police Commissioner and also remit the amounts collected from those facilities to the Advocate-Commissioner, the learned single Judge, by the order dated 26.4.2002, has ordered police protection to the Advocate-Commissioner. Aggrieved by the said orders passed by the learned single Judge, Writ Appeal Nos.2665 to 2667 of 2002 were preferred by the 2nd respondent.

17. While the above writ petition and writ appeals are pending, the petitioner Union has again filed W.P.No.47160 of 2006 as a public interest litigation contending that many anti-social elements are occupying the P.Cs., and are collecting the daily amounts from the public and taking it away with them and denying the concerned workers their due wages.

18. We have heard the learned counsel appearing for all the parties concerned and perused the entire materials available on record.

19. Part IV of the Constitution deals with 'Directive principles of State Policy'. Article 41 provides for right to work, to education and to public assistance, Article 42 mandates the State to make provision for securing just and humane conditions of work and for maternity relief. Likewise, Article 43 mandates the State to endeavour to secure, by suitable legislation

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or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The right to minimum wages is traceable under Article 21 of the Constitution, which could be sought to be implemented as a fundamental right, since the right to livelihood is an integral facet of the right to life as has been held by the Apex Court in NARENDRA KUMAR vs. STATE OF HARYANA (JT (1994) 2 SC 94).

20. A constitutional obligation is created on the State regarding the public health and sanitation, which is a matter of public safety and falls within the ambit of Article 21 of the Constitution and citizens have a right to healthy environment, as has been held by the Apex Court in M.C.MEHTA vs. UNION OF INDIA (AIR 1987 SC 1086) and BANDHUA MUKTI MORCHA vs. UNION OF INDIA (AIR 1984 SC 802). Section 184 of the Chennai City Municipal Corporation Act, 1919 mandates that 'The corporation shall provide and maintain in proper and convenient places a sufficient number of public latrines and shall cause the same to be kept clean and in proper order'. Section 185 reads:

> "185. Licensing of public latrines:
> (1) The Commissioner may license for any period not exceeding one year the provision and maintenance of latrines for public use.
> (2) No person shall keep a public latrine without a licence under sub-section (1).
> (3) Every licensee of a public latrine shall maintain it clean and in proper order." (emphasis supplied)

Section 3(13) of the said Act defines the term 'latrine' as a place set apart for defecating or urinating or both and includes a closet of the dry or water-carriage type and urinal.

21. Therefore, according to Section 185 of the Act, a licence regarding the maintenance for public use shall not be granted for more than a year. But, in the case on hand, it is stated that Sulabh International was granted licence for 30 years by the Corporation. Being an authority under law, the Corporation ought to have followed transparent procedures in granting licence. But, the Government of Tamil Nadu, realising the fact that there are no Rules in Corporation Act for carrying out works on nomination basis without calling for tenders and the allocation of Public Conveniences to Sulabh International is in violation of the Chennai Corporation Act, has passed G.O.Ms.No.108 MA&WS Department dated 5.5.1999, cancelling the earlier G.O.Ms.No.102, MA&WS Department dated 18.2.1985 and G.O.Ms.No.105, MA&WS Department dated 15.4.1996 and ordered the Corporation of Chennai to follow the tender procedures for the construction of public conveniences

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and their maintenance as per the Chennai Corporation Act and no work shall be carried out on nomination. The said G.O.Ms.No.108, dated 5.5.1999 was not assailed by Sulabh International.

22. But, surprisingly, the Government has once again issued G.O.Ms.No.130, dated 14.12.1999 allotting 30 P.Cs. on trial basis to one 'Nagara Thuyimai Padukavalar Munnetra Sangam 2000', the appellant in W.A.No.2234 of 2000, for one year without conducting any auction. When the Corporation has called for tenders for maintenance of public conveniences, the said 'Nagara Thuyimai Padukavalar Munnetra Sangam 2000' has filed Writ Petition No.20436 of 2000 praying to quash the said auction notice published in the newspaper on 20.11.2000. The said writ petition was dismissed by a learned single Judge of this Court by order dated 5.12.2000. Aggrieved, Writ Appeal No.2234 of 2000 was preferred by the said 'Nagara Thuyimai Padukavalar Munnetra Sangam 2000'. Along with the said Writ Appeal, C.M.P.No.19410 of 2000 has also been filed praying to issue an order of ad-interim stay of all proceedings pursuant to the notification bearing S.W.M.C.No.A.7/3918 to 3969/2000 and a Division Bench of this Court, by the order dated 8.12.2000, has ordered as follows:

> "The learned counsel submits that in an identical case, notice was ordered. Notice of motion returnable by six weeks. No ground is made out for granting stay. Auction can go on. Petitioner/appellant is also free to participate in the auction, if so desired and eligible. But, auction should not be finalised until further orders. Post along with connected matters on 22.1.2001"

23. While the truth is such, in W.P.Nos.12544 of 1999 and 47160 of 2006, the Commissioner, Corporation of Chennai has filed an affidavit on 12.2.2007 stating in Para No.3.1 as follows:

> "The above G.O.Ms.No.108, MA&WS Dept dt.5.5.1999 is still in force and it has not been modified nor cancelled by the Government. It has not been disputed or challenged by any organisation till date. Further, it was decided to allow the Advocate Commissioners appointed by the High Court to maintain the Public Conveniences located in Zones I to IV till the final orders passed by this Hon'ble High Court. Hence, Sulabh has no right to maintain these Public Conveniences. Hence the Public Conveniences have to be taken from them and handed-over to the Corporation for conducting Public auction.
>
> I submit that the Nagara Thooimai Padukavalar Munnetra Sangham 2000 represented by its President filed a Writ Petition in WP.No.20436 of 2000 seeking direction to quash the auction notice published in the Newspaper, dated 20.11.2006 (sic.20.11.2000) bringing the public

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conveniences for public auction. The High Court dismissed the Writ Petition on 5.12.2006 (sic.5.12.2000). Against the order the Petitioner preferred an appeal in w.A.No.2234 of 2000l and obtained interim stay in CMP.No.19410 of 2000 and the case is pending before this Hon'ble Court."

24. When there is no stay in CMP.No.19410 of 2000, but the Corporation has been permitted by a Division Bench of this Court to go on with the auction, the Corporation did not conduct the auction. But, has now filed an affidavit saying there is an interim stay against conducting the auction. Any how, no auction was conducted so far by the Corporation giving way for many anti-social elements to squat on the P.Cs. illegally and unauthorisedly in the name of maintaining them, as has been narrated by the petitioner in W.P.No.47160 of 2006 with instances, which was fortified by the reports filed by the Advocate-Commissioners appointed by this Court.

25. Since the affidavit of the Commissioner, Corporation of Chennai has revealed the pendency of W.A.No.2234 of 2000, which is inextricably connected to the matters on hand, we have directed the Registry to post it also along with these matters and heard it along with these matters.

26. Entire perusal of the materials placed on record would depict a bleak picture of the maintenance of the Public Conveniences by the Corporation paving way for many anti-social elements grabbing and squatting over them to unalwfully enrich themselves. The Advocate-Commissioners appointed by this Court have done a commendable and laudable job in streamlining the functioning of the P.Cs. The reports filed by the Advocate-commissioners in these matters would show that a tremendous pressure has been exerted on them by the so-called public representatives, directly or through their henchmen, to grab the P.Cs.

27. From the pleadings available on record, it is clear that much money is involved in maintaining the P.Cs. and even the Corporation has granted funds to Sulabh International to run and maintain the P.Cs. and it is not that Sulabh International has done a charity or a 'no loss no gain' services as has been averred by them and argued on their behalf throughout. From the reports filed by the Advocate-Commissioners and the collections made, this Court is unable to accept the plea of Sulabh International that it is a 'no loss no gain' service but definitely it is a 'much gain and no loss' business that was conducted by Sulabh International using the public money. The objects and reasons relied on by

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Sulabh International seem to be made only for propagation but not for practice.

28. The 2nd respondent took a firm stand that it is not an 'industry' within the meaning of Industrial Disputes Act. The said question has been decided upto the Supreme Court.

29. On one hand, the Corporation takes a stand that since the staff were engaged by Sulabh International, it has nothing to do with the matter and on the other hand, Sulabh International takes a stand that since collections were not properly deposited into their accounts, they were unable to pay wages to the staff and that they have not engaged any staff as such, but they have joined the Members, who are free to leave the organisation at any time, since it is only honorarium and conveyance that is being paid to them but not the salary. Whatever be the name, the fact lies that Sulabh International has engaged some people to maintain the P.Cs. and they were being paid some amounts for their services/duties. When Sulabh International was minting money, under the clothe of 'service' and 'no loss no gain' ' that too by making use of the public money through the Corporation, it cannot be said to be the 'service' in its true sense that is being rendered by them, but only a business under the name of 'service' that is being conducted by them. Therefore, it should have adopted a fair policy of making regular, uninterrupted payments to the poor illiterate labourers and exploiting them under the name of 'service' as if it is a 'voluntary service' is nothing but an effort to colour the sky. The fact lies that most of these 'volunteers' are in service for quite a long time and a substantial number of them even from 1985, when Sulabh International had taken over the maintenance of P.Cs. Regarding the plea of Sulabh International that against some of their erstwhile volunteers they have filed both civil and criminal cases, they could very well pursue their legal remedies and the same cannot be stand for depriving the rights of employees in denying or dodging their due.

30. The Corporation should have been vigilant in protecting its P.Cs., not allowing anti-social elements and muscle-men to grab and squat over them unauthorisedly. Since it is the case of the Corporation that Sulabh International is unauthorisedly occupying certain Public Conveniences, they are entitled to proceed against Sulabh International for damages before appropriate forum of law. Considering all the facts and circumstances, we consider it appropriate to direct the Corporation of Chennai to auction the maintenance of P.Cs. in the city of Chennai through vide publicity. In this view, we are unable to appreciate the stand taken by the appellant in

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W.A.No.2234 of 2000 that arbitrarily the Corporation has issued the tender notification, when G.O.Ms.No.130, dated 14.12.1999 has been issued in their favour allotting some P.Cs. for maintenance on trial basis for one year. As has already been discussed by us supra, when the Government has found that there are no rules in Corporation Act for carrying out works on nomination basis without calling for tenders and cancelled G.O.Ms.No.102, MA&WS Department, dated 18.2.1985, by issuing G.O.Ms.No.108, MA&WS Department dated 5.5.1999, how again the Government issued G.O.Ms.No.130, dated 14.12.1999 is a million dollar question that remained unanswered all through. Since the propriety of G.O.Ms.No.130, dated 14.12.1999 is not under challenge before us, we refrain ourselves from commenting any further. As has been rightly observed by the learned single Judge, while disposing of the Writ Petition, the appellant in W.A.No.2234 of 2000 is also free to participate in the auction, if they so desire. Therefore, we see no merit in W.A.No.2234 of 2000 and the same is accordingly dismissed.

31. Regarding the claim of the petitioners seeking a direction to the the 1st respondent Corporation to absorb the Members of the petitioner Union listed in the typed set of papers as its employees and regularise their services and in particular afford them just and reasonable conditions of service such as fixed working hours, D.A., weekly, national and festival holidays, payment of bonus etc., and protection for the body of the workers by giving them uniforms, gloves etc. and protective gear, and also ensure payment of same wages for the women workers as is given to men workers in accordance with the provisions of Equal Remuneration Act, the Corporation expressed its inability to absorb the petitioners. It is also brought to the notice of this Court by the Advocate-Commissioners that the list of employees furnished by Sulabh International and the petitioner do not tally with each other.

32. In PEOPLE'S UNION FOR DEMOCRATIC RIGHTS AND OTHERS vs. UNION OF INDIA AND OTHERS [(1982 2 SCC 494], considering the plight of the workers temporarily employed by contractors in connection with construction works, the Apex Court, by its judgment dated 11.5.1982, directed 'the Union of India, the Delhi Administration and the Delhi Development Authority do take the necessary steps for enforcing observance of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, the Minimum Wages Act, 1948, the Equal Remuneration Act, 1976, the Employment of Children Act, 1938 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 by the contractors engaged in the construction work....'

33. Thereafter, in addition to the above directions given, the Apex Court, in PEOPLE'S UNION FOR DEMOCRATIC RIGHTS AND

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OTHERS vs. UNION OF INDIA AND OTHERS [(1982) 3 SCC 235], by its judgment dated 18.9.1982, held that 'State has supervening responsibility to see that the benefits under the labour laws, which touch upon fundamental rights, are not infringed by private contractors or any other person.'

34. In SECRETARY, H.S.E.B. vs. SURESH AND OTHERS [(1999) 3 SCC 601], the Apex Court has held:

> "The doctrine of equality as enshrined in the Constitution promised an egalitarian society and the Contract Labour (Regulation and Abolition) Act, 1970 is the resultant effect of such a constitutional mandate having its due focus in that perspective. The Supreme Court has interpreted the equality clause so as to mean that the people of the country ought to be secured of socio-economic justice by way of a fusion of Fundamental Rights and Directive Principles of State Policy. Socialism ought not to be treated as a mere concept or an ideal, but the same ought to be practised in every sphere of life. India is a Socialist State as the Preamble depicts and the aim of socialism, therefore, ought to be to distribute the common richness and the wealth of the country in such a way so as to subserve the need and the requirement of the common man. Therefore, the contractor Labour (Regulation and Abolition) Act, 1970 ought to be read and interpreted so that social and economic justice may be achieved and the constitutional directive be given a full play. "

It has been further held:

> "There is, however, a total unanimity of judicial pronouncements to the effect that in the event the contract labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being perennial in nature, that is to say, in the event of the engagement of labour force through an intermediary which is otherwise in the ordinary course of events and involves continuity in the work, the legislature is candid enough to record its abolition since involvement of the contractor may have its social evil of labour exploitation and thus the contractor ought to go out of the scene bringing together the principal employer and the contract labourers rendering the employment as direct, and resultantly a direct employee."

This aspect of the matter has been dealt with great lucidity by the Apex Court in AIR INDIA STATUTORY CORPORATION vs. UNITED LABOUR UNION [(1997) 9 SCC 377].

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35. In GAMMON INDIA Ltd. vs. UNION OF INDIA [(1974) 1 SCC 596], the Apex Court has held:

> "The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities..."

36. In GHAZIABAD DEVELOPMENT AUTHORITY AND OTHERS vs. VIKRAM CHAUDHARY AND OTHES [(1995) 5 SCC 210], when the High Court directed the Development Authority not to terminate the services of temporarily daily wage employees in a project on hand so long as it had work on hand, and to follow the principle of last come first go while effecting termination and to give preference to displaced employees for re-employment, the same was challenged by Ghaziabad Development Authority on the ground that Sections 25-F and 25-G have no application to them. Considering all the facts and circumstances of the case, the Apex Court has held:

> "Such principles, even if the Development Authority was not an industry is consistent with principles of natural justice and equity, justice and good conscience."

37. In view of the Directive Principles of State Policy enshrined under Chapter IV of the Constitution, Sections 184 and 185 of the Chennai City Municipal Corporation Act and following the above principles enunciated by the Apex Court and in the interest of justice, we feel it appropriate to issue the following directions:

(i) The Corporation of Chennai is directed to immediately take possession and maintenance of all the Public Conveniences in the City of Chennai, excluding the ones already in possession and maintenance of the Advocate-Commissioners appointed by this Court. For this purpose, the Commissioner of Police, Chennai is directed to extend full cooperation to the Commissioner of Corporation of Chennai, so as to dispossess all the unauthorised occupants of the Public Conveniences.

(ii) The Corporation of Chennai is directed to call for tenders for maintenance of all the Public Conveniences in the City of Chennai, in conformity with the provisions of the Chennai City Municipal Corporation Act, 1919 and allot the Public Conveniences for maintenance to highest bidders.

(iii) Till the selection of such contractors, the existing

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system of maintaining the Public Conveniences by the Advocate-Commissioners shall continue and the Public Conveniences which were hitherto being maintained by unauthorised occupants shall be maintained, till the contractors are selected, by the Corporation itself. In case of any difficulty in providing staff for the same, the Commissioner, Corporation of Chennai can take the assistance of Advocate-Commissioners appointed by this Court and relocate some of the staff members now working in the Public Conveniences being maintained by Advocate-Commissioners and Sulabh International, to such Public Conveniences, so as to avoid any inconvenience to the general public.

(iv) After selection of such maintenance contractors, the Advocate-Commissioners shall hand-over possession of the Public Conveniences to the Commissioner, Corporation of Chennai, who in turn shall take the responsibility of handing over them to the highest bidders, after following the procedures contemplated under law.

(v) Since excess collection of fare from the public at the Public Conveniences is the order of the day, the Commissioner, Corporation of Chennai is directed to form a Monitoring Committee to find out erring cases and take action in accordance with law against the violaters.

(vi) The Commissioner, Corporation of Chennai is directed to find out and draw a list of employees working in the Public Conveniences, hitherto run by Sulabh International pursuant to G.O.Ms.No.102, dated 18.2.1985, which were thereafter taken possession of and maintained by the Advocate-Commissioners, as on the date of filing of W.P.No.12544 of 1999, who are in service continuously till date, but excluding the personnel appointed either by Sulabh International after 5.5.1999 i.e. from the date of G.O.Ms.No.108 (whereby the contract of Sulabh International was cancelled by the Government) or by unauthorised occupants of the Public Conveniences. For this purpose, the Commissioner, Corporation of Chennai is free to take the assistance of the Advocate-Commissioners appointed by this Court and Mr.V.Prakash, Senior Counsel, who is said to be the honorary President of the United Labour Federation/petitioner in W.P.Nos.12544 of 1999 and 47160 of 2006 and solve the dispute regarding the absence or inclusion of certain employees and assign them the seniority according to their date of joining.

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(vii) It is brought to our notice regarding the proceedings of the Superintending Engineer Solid Waste Management Corporation of Chennai in S.W.M.C.No.A9/776/2002, dated 28.2.2006 whereby the Government ordered that the sanitary workers, those who were recruited through employment exchange and receiving consolidated wages in Corporation of Chennai, numbering 1688 persons, are ordered to be appointed in the time scale of pay carrying Rs.2550-55-2660-60-3200 and brought into regular establishment with effect from 28.2.2006, subject to ratification by the appointments committee. Since the above said identified employees in the Public Conveniences are also discharging the same functions, we direct the Corporation of Chennai to fix the same pay scale to such identified sanitary workers in the Public Conveniences. However, liberty is given to the Commissioner, Corporation of Chennai, to fix the pay scales for other such identified employees, who were in the cadre of Superintendents and other employees on par with such similarly placed employees in the Corporation of Chennai.

(viii) The employees working in the Public Conveniences now being run by Sulabh International are also entitled to the above said pay scales from 28.2.2006 and Sulabh International is directed to pay the wages to such employees from 28.2.2006 with arrears till they hand over possession of the Public Conveniences to the Commissioner, Corporation of Chennai, within four weeks from today.

(ix) Following the principles enunciated by the Apex Court in PEOPLE'S UNION FOR DEMOCRATIC RIGHTS AND OTHERS vs. UNION OF INDIA AND OTHERS [(1982)2 SCC 494] and [(1982) 3 SCC 235], we direct the Government of Tamil Nadu and the Corporation of Chennai to take necessary steps for continuing the above identified employees in their respective jobs, enforcing the above said pay scales and also to observe the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, the Minimum Wages Act, 1948, the Equal Remuneration Act, 1976, the Employment of Children Act, 1938 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 by the contractors to be engaged by them by way of auction for maintenance of the Public Conveniences. It shall form part of the tender condition.

(x) Since the Corporation of Chennai has expressed its inability to absorb any of the employees into its services as of now, we hereby direct that in case of any vacancies lying vacant as on date with the

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Corporation of Chennai or which would arise hereafter, it shall strive to absorb the above said identified persons (as mentioned in clause (vi) above) into its services, in their order of seniority, before going to appoint any fresh hands.

(xi) In case of shortage of employees to run the Public Conveniences, the existing employees working in the Public Conveniences being run by the Advocate-Commissioners and Sulabh International, besides the above said identified employees, could be engaged by the Contractors with preference over the new recruits, if any to be appointed, and they shall also be provided with the same pay scales as has been given to the above said identified employees. Their conditions of service shall also be similar to the above said identified employees.

(xii) Any fresh appointment of any personnel to any of the Public Conveniences under the control of the Contractors, shall be made by them only with the prior permission of the Commissioner of Corporation of Chennai and their term shall be only to the pleasure and displeasure of the contractors. However, such employees shall also be provided with the same pay-scale as has been adverted to supra.

(xiii) The Advocate-Commissioners shall pay the wages of the employees working in the Public Conveniences being run by them, by fixing their pay-scales, as aforementioned, within four weeks from today, with effect from 28.2.2006, from which date onwards the similarly placed employees of the Corporation were awarded pay scales.

(xiv) With a view to avoid any unnecessary harassment to the workers and also to avoid any exploitation from the contractors, it is clarified that the Commissioner, Corporation of Chennai shall be the authority for such identified employees and other existing staff of the Public Conveniences, in case of their appointment by the Contractors to the Public Conveniences, for taking any disciplinary action. The contractors of the Public Conveniences, shall have only supervision powers over the staff and the contractors of the Public Conveniences, could bring it to the notice of the Commissioner, Corporation of Chennai regarding any indiscipline activity of any of such identified staff, on which the Commissioner of Corporation of Chennai, shall act in accordance with law.

(xv) It is further clarified that until and unless any of such identified employee is absorbed into the services of Corporation of Chennai, there will not be any

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employer-employee relationship between such employees and Commissioner, Corporation of Chennai. Contractors would be the employers, for any other purposes. Except to enjoy the pay scales as that of the similarly placed workers of the Corporation of Chennai, such identified employees and other existing staff of the Public Conveniences, in case of their appointment by the Contractors, will not have any other legally enforceable right over the Corporation.

(xvi) The Commissioner, Corporation of Chennai shall ensure all steps for prompt payment of wages to such identified employees by the Contractors and he is also free to frame any guidelines/scheme for the welfare of such identified employees, keeping in mind the object of this judgment. He shall take all possible and positive steps to accommodate, as far as possible, all the employees working as on date in the Public Conveniences being run by the Advocate-Commissioners and the Sulabh International but not the persons working in the Public Conveniences being run by the unauthorised occupants. In case of any excess staff, 'last come first go' must be the principle.

(xvii) The Commissioner, Corporation of Chennai is further directed to examine and frame a scheme regarding the prayer of the petitioners for reasonable conditions of service such as fixed working hours, D.A., weekly, national and festival holidays, payment of bonus etc., and protection for the body of the workers by giving them uniforms, gloves etc. and protective gear.

(xviii) Since it is brought to the notice of this Court that neither the Sulabh International nor the Advocate-Commissioners after their appointment have submitted accounts regarding the collection and maintenance of the Public Conveniences to the Commissioner, Corporation of Chennai, we direct the Sulabh International to furnish accounts regarding the Public Conveniences from the date of the termination of their contract by virtue of G.O.Ms.No.108 MA&WS Department dated 5.5.1999 and the Advocate-Commissioners from the date of their appointment.

We appreciate the unstinted and valuable assistance rendered by the Advocate-Commissioners and Mr.V.Prakash, Senior Counsel in these matters.

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With such directions and observations, W.P.No.12544 of 1999 and W.P.No.47160 of 2006 are disposed of. W.A.Nos.2234 of 2000, 2665 to 2667 of 2002 are dismissed. Consequently, all the connected miscellaneous petitions and C.M.P. are closed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

(Enclosed herewith 2 Annexure)

Rao

To

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600003.

2.The Commissioner of Police,
Egmore, Chennai-600008.

3.The Deputy Commissioner of Police,
Washermanpet, Chennai-600021.

4.The Inspector of Police,
H-4 Police Station,
Wannarapet, Chennai-600021.

5.Inspector of Police,
H-5 Police Station,
Chennai-600021.

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6. The Superintending Engineer (SWM)
Solid Water Management
Corporation of Chennai
Chennai.3

7. Mr. G. Jermiah,
Advocate CommissionerNo.2 Frana's Joseph St,
Chennai.

1 cc to Mr.S.S. Vasudevan, Advocate, sr. 27234
1 cc t M/s. Aiyar and Dolia, Associates, Sr. 23685
1 cc to Mr.L.N. Pragasam, Advocate, Sr. 27404

W.P.12544/1999
etc. batch

NSM (CO)
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